

REMARKS

The Office Action mailed January 13, 2005 requires restriction to one of three identified groups:

- I. Claims 1 – 4, 6 – 13, 15, and 16;
- II. Claims 17 – 20 and 22; and
- III. Claims 23 – 26.

Applicants elect the claims of Group I with traverse.

Claims cannot be properly restricted without a showing by the Office that a search and examination of the claims on the merits would constitute an undue burden on the Office. MPEP 803.01. In establishing that an “undue burden” exists, the Office must demonstrate that examination of the claims would involve substantially different prior-art searches that render coexamination unduly burdensome. In this instance, the Office Action appears to rely on a separate classification of the restricted groups as establishing such an undue burden.

It is respectfully believed that the separate classifications identified in the Office Action are not consistent. The claims of Group I have been classified in Class 310, Subclass 309 (Electrical generator or motor structure: non-dynamoelectric: charge accumulating: electrostatic), but are directed to “a movable microstructure,” and not to an electrical generator or motor structure. The claims of Group II have been classified in Class 318, Subclass 116 (Electricity: Motive Power Systems: nonmagnetic motor), but are directed to a method for fabricating a movable microstructure, and not to a nonmagnetic motor. The claims of Group III have been classified in Class 385, Subclass 18 (Optical waveguides: with optical coupler: switch: reflective-type switch), but are directed to a moveable microstructure, and not to an optical waveguide. Rather, all of the claims have the common feature that they are directed to a movable microstructure that uses interdigitation or method for fabricating a moveable microstructure that uses interdigitation. As such, a search of the claims in one of the three groups will be substantially coextensive with a search of the claims of the other groups. A search and examination of the claims of all three groups would therefore not unduly burden the

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Office. Should the restriction requirement be maintained on the basis of the classifications provided in the Office Action, Applicants request an explanation of how those classifications correspond to the claim recitations.

The Office Action also mischaracterizes the relationships between Groups I and II and between Groups II and III, identifying them as being related as "product and process of use." The claims of Group II relate to a "method of fabricating a movable microstructure" (emphasis added), and as such the relevant analysis is that described at MPEP 806.05(f), not that described at MPEP 806.05(h). The restriction requirement is accordingly also traversed on the basis that the argument provided in the Office Action is directed at alternative methods of operation of microstructures, which is not relevant to the correct relationships of the claims. The showing required by MPEP 806.05(f) has therefore not been met.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,


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